

**IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

GENERAL JURISDICTION DIVISION

PATRICK McGRATH III, individually and on behalf of all CASE NO.: 99-21456 CA-10
others similarly situated; MIAMI-DADE COUNTY, et. al., CASE NO.: 99-23765-CA 10
Plaintiffs and Intervenors,

v.
THE CITY OF MIAMI, a municipal corporation,

Defendant.

NOTICE OF CLASS ACTION, PROPOSED SETTLEMENT, AND SETTLEMENT HEARING

THIS NOTICE MAY AFFECT YOUR LEGAL RIGHTS.

PLEASE READ THIS ENTIRE NOTICE CAREFULLY.

TO: ALL PERSONS OR COMPANIES WHO PAID FOR USE OF A PARKING SPACE OPEN TO THE PUBLIC AT A NON-RESIDENTIAL PARKING FACILITY LOCATED IN THE CITY OF MIAMI AT ANY TIME FROM SEPTEMBER 1, 1999 THROUGH SEPTEMBER 30, 2002

This document is your Notice, pursuant to Rule 1.220 of the Florida Rules of Civil Procedure, that a class action is pending in the court and in the case shown above. The purpose of this Notice is to explain a proposed Settlement ("Settlement") of the class action lawsuit arising from a twenty percent (20%) parking surcharge imposed by the City of Miami ("City") for the use of a parking space in a parking facility open to the public in the City pursuant to the City's Parking Surcharge Ordinance No. 11813 ("Parking Surcharge") and of a lawsuit brought by Miami-Dade County (the "County") also related to the imposition of the parking surcharge with respect to certain County owned parking facilities located in the city. The cases are referred to in this Notice as the "Litigation." As detailed below, you may be entitled to a refund for any payments you made of the Parking Surcharge. ***This is not a notice of a lawsuit against you. You are not being sued.***

PART 1: DESCRIPTION OF THE LAWSUIT AND THE SETTLEMENT NEGOTIATIONS

A class action lawsuit was filed on September 13, 1999 alleging that the City's Parking Surcharge was unconstitutional. The City disputed the allegations and the trial court agreed with the City upholding the constitutionality of the Fla. Stat. § 218.503(5)(a), Florida Statutes (1999), which was the statute upon which the City relied to impose the Parking Surcharge. The Class Representative appealed that ruling to the Third District Court of Appeals, which declared the statute unconstitutional. Then, the City appealed the case to the Supreme Court of Florida. While that appeal was pending, the Florida Legislature in 2001 amended the statute to correct the constitutional infirmity identified by the Third District Court of Appeals and also passed a law ratifying and approving the collection of all monies pursuant to the original statute. On July 11, 2002, the Supreme Court of Florida ruled that the original statute was an unconstitutional special law. Although the issues were fully briefed, the Supreme Court declined to rule on the effect of the 2001 amendments on Fla. Stat. § 218.503, the validity of the law ratifying and approving the collection of all monies pursuant to the original statute, and whether a refund was a proper remedy when the original statute has been found unconstitutional.

After the Florida Supreme Court ruled that the original statute was unconstitutional but declined to rule on the effect of the amended statute or the ratification, including whether Class Members are or would be entitled to a refund, the parties began settlement negotiations. After months of negotiations among Class Counsel, the attorneys for the City, and the attorneys for Miami-Dade County, a compromise was reached. On October 23, 2002, the parties signed a Settlement Agreement and Release and agreed to settle the case as proposed, and all parties believe the Settlement is fair, reasonable, and in the best interests of all parties.

The Settlement provides that the City will establish a fund of \$14,000,000 (Fourteen Million Dollars) to refund Parking Surcharge fees collected between September 1, 1999, and September 30, 2002, after deduction of administrative costs and attorney's fees and expenses as provided for in the Settlement. If upheld by the courts, the amended statute would authorize the City to collect the Parking Surcharge until 2006 or beyond. However, the City has also agreed to discontinue collection of the Parking Surcharge at the Airport, Seaport, the Cultural Center Garage, the Hickman Garage, and the 140 West Flagler Street Garage as of October 1, 2002, and to discontinue collection of the surcharge at all other parking facilities on September 30, 2004.

The Court has not decided whether Plaintiffs' claims or the City's defenses have any merit, and it will not do so if the Settlement is approved. The Settlement does not suggest that the City has or has not done anything wrong, or that the Plaintiffs or the Class would or would not win their case if it were to go to trial over the unresolved issues in the case.

If you have paid a parking surcharge, you may be eligible to recover some or all of the parking surcharge fees paid. The following describes the Settlement and what actions, if any, you may want to take prior to the Court's ruling on final approval, which has been set for a hearing on February 10, 2003 (the "Final Approval Hearing").

THESE ARE THE CHOICES THAT YOU MUST MAKE AT THIS TIME:

FIRST: You must decide whether you want to be part of the Settlement. If you do, you must file a Request for Refund Form, described below, no later than **January 27, 2003**. You also must decide no later than January 27, 2003, whether you wish to object to the Settlement and file any written objection. **The Request for Refund Form is available by calling the Class Action Administrator at 1-877-647-5879 and can also be viewed (along with the various settlement documents) on the internet at www.miamisurcharge.com and printed from that web site.**

SECOND: If you do not want to be part of the Settlement, you must request exclusion from the Class no later than January 27, 2003. Instructions for doing so are set forth in Part 7 below. Otherwise, you will be bound by all the terms of the Settlement if approved by the Court. If you do not exclude yourself from the class, or do not respond at all, you may receive no benefits or less benefits than if you submit a proof of claim, and if the settlement is approved, it will affect your right to start or continue any other lawsuit or proceeding involving payment of a parking surcharge in the City. It is important to note that the settlement will not affect any unrelated claims you may have against the City.

PART 2: WHY YOU HAVE RECEIVED THIS NOTICE

You have received this Notice because you **may** be eligible for certain benefits through the Settlement of a class action lawsuit. The lawsuit was brought on behalf of a Class consisting of all persons who paid the Parking Surcharge. Although the Court has not yet approved the Settlement, it has directed that this Notice be sent to you as a Class Member to inform you of it and to give you an opportunity to comment on it. **You should read this Notice carefully, because it explains decisions you must make and actions you must take now to protect your rights to a refund.** These decisions and actions will affect your legal rights and any relief you may be eligible to receive under the Settlement.

PART 3: DESCRIPTION OF THE CLASS

"Class" and "Class Members" means all natural persons or entities who paid the Parking Surcharge during any portion of the period beginning on September 1, 1999 and ending on September 30, 2002. However, the Class excludes any persons or entities who paid a Parking Surcharge to secure the release of a vehicle stored or impounded by a towing company located in the City. These persons or entities are the members of a class created pursuant to a settlement agreement between the City and certain plaintiffs in *Jasinski v. City of Miami*, case no. 02-21572-CIV-Seitz, United States District Court for the Southern District of Florida. This exclusion will not prevent you from claiming a refund of any Parking Surcharge paid by you at other public parking facilities. *For additional information about the Jasinski case, please call, Fred Bredemeyer of the Parking Network at (305) 571-1951.* "Parking Surcharge" means the 20% fee charged by the City beginning on September 1, 1999 for the use of a parking or storage space in a public parking facility pursuant to the Ordinance and the Surcharge Regulations.

PART 4: DECISIONS YOU MUST MAKE NOW

First, you must decide now whether you wish to remain in the Class or to exclude yourself from the Class. If you remain in the Class, you have certain additional choices to make now, as described below in Section A. If you want to be excluded from the Class, you must notify the Court, as described below in Part 7.

A. IF YOU DECIDE TO REMAIN IN THE CLASS:

1. You **may** be eligible to obtain a refund of all or a portion of the Parking Surcharge paid by you at any time between September 1, 1999, and September 30, 2002, if the Settlement is approved.
2. You must submit a Request for Refund Form to the Class Action Administrator if you seek these benefits, as described in Part 5 below. **The Request for Refund Form is available by calling the Class Action Administrator at 1-877-647-5879 and can also be viewed (along with the various settlement documents) on the internet at www.miamisurcharge.com and printed from that web site.**
3. You also may object to any aspect of the Settlement by filing a written objection. The Court and the parties must receive your written objection postmarked no later than January 27, 2003. The procedures for objection are described in Part 8 below.

4. If you remain in the Class, you will be bound by all orders and judgments in this case, whether favorable or unfavorable. You will not be able to start, continue, or otherwise participate in any other claims, lawsuits, or other proceedings against the City relating to any Settled Claims (defined in part 6 below).

B. IF YOU DECIDE TO EXCLUDE YOURSELF FROM THE CLASS:

You must submit a written exclusion request that complies with the requirements of Part 7 below. The request must be postmarked by January 27, 2003, filed with the Clerk of the Eleventh Circuit Court and copies must be sent to Counsel for the Class and Counsel for the City at the addresses listed in part 7 below. If you submit such a request:

1. You will **not** be eligible for any of the benefits of the Settlement.
2. You will **not** be able to object to the Settlement.
3. You will **not** be bound by any orders or judgments entered in this case if the Settlement is approved.

If you choose to exclude yourself from the Class, or if the Court does not approve the Settlement, you will not be eligible for any relief under this Settlement.

PART 5: THE TERMS AND BENEFITS OF THE PROPOSED SETTLEMENT

The City has agreed to create a fund of \$14,000,000 to pay refunds to Class members who paid the Parking Surcharge at any time beginning September 1, 1999, and ending on September 30, 2002. Upon receipt of a valid Request for Refund Form, these monies will be distributed as follows, after payment of administrative costs and the fees and expenses of Class Counsel:

1. Any person or entity who parked in a County owned facility and paid the Parking Surcharge will receive a complete refund of all Parking Surcharges paid at the County owned facility.
2. Any person or entity who parked in a non-County owned facility and paid the Parking Surcharge will receive a pro rata refund of all Parking Surcharges paid until the settlement fund of \$14,000,000 is exhausted.
3. If, after all eligible Class members who submitted a valid Request for Refund have been paid in full, any portion of the settlement fund is unused, it shall be returned to the City.

If you decide to remain in the Class, and the Court approves the Settlement, you may be eligible to receive monetary relief. The specific benefits for which you are eligible depend on several factors, including the amount of money that you paid. If you decide to participate in the Settlement, the portion of the Settlement that will be distributed to each Class member will depend on the amount of the Parking Surcharge each Class member paid, the number of Class members who participate in the settlement, and possibly on the amount of attorney's fees and expenses awarded by the Court to Class counsel. In the absence of this Settlement, Class members faced the possibility of not recovering any of the Parking Surcharge monies that the City collected and the possibility that the Parking Surcharge would continue until 2006 or beyond.

If you have any question about the tax consequences arising from the receipt of a refund of the Parking Surcharge, you must consult your own tax advisor. Counsel for the Class, City, and County cannot advise you on such matters.

PART 6: RELEASE OF CLASS MEMBERS' CLAIMS AND DISMISSAL OF THE LAWSUIT

Upon Final Approval, and by not electing to be excluded from the Class, each Class member agrees to forever release and discharge the City and the County from any and all manner of claims and causes of actions, including any claims relating to federal or state law, that have been, could have been, may be or could be alleged or asserted now or in the future by McGrath or any Class member against City in the Litigation, or in any other court action or before any administrative or governmental body or agency (including any federal or state regulatory commission), tribunal, arbitration panel or self-regulatory organization on the basis of, connected with, arising out of, or related to, in whole or in part, all causes of action relating to the Parking Surcharge, including without limitations, any and all claims in connection with the Ordinance, the original statute, the amended statute, and the collection of the Surcharge by the City (the "Settled Claims").

By not electing to be excluded from the Class, each Class member expressly agrees that he or she, acting individually or together, shall not seek to institute, maintain, prosecute, sue or assert in any action or proceeding any action or actions, cause and causes of action, or claim on the basis of, connected with, arising out of, or related to, in whole or in part any of the Settled Claims, including without limitation, any or all of the acts, omissions, facts, matters, transactions or occurrences that were directly or indirectly alleged, asserted, described, set forth or referred in, or related to, the Litigation, including without limitation, the facts, events and circumstances that are the basis of the allegations set forth in the Litigation. Nothing herein shall preclude any action to enforce the terms of the Settlement Agreement.

In connection with this release and covenant not to sue, the Class members, through the Class Notice, acknowledge that they are aware that they may hereafter discover facts, claims and causes of action presently unknown or unsuspected, or facts in addition to or different from those which they now know or believe to be true with respect to the matters released herein. Nevertheless, the Class members will settle and release all such matters, and all actions, causes, causes of action, claims, and Unknown Claims (as defined below) relating to the subject matter of the Litigation, which exist, hereafter may exist, or might have existed (whether or not previously or currently asserted in any action).

"Unknown Claims" means and includes those claims that any Class member does not, for whatever reason, know or suspect to exist in his or her favor at the time of the release of the City and that, if known by him or her, may have materially affected his or her decision to settle or not to object to the Settlement Agreement. The Class members expressly understand and agree that the Settlement Agreement releases all claims arising prior to the execution of the Settlement Agreement of every nature and kind whatsoever, whether known to them or not, relating only to the subject matter of the Litigation.

Upon final approval of the settlement, the Litigation will be dismissed with prejudice.

PART 7: INSTRUCTIONS FOR EXCLUDING YOURSELF FROM THE CLASS

If you do not wish to participate in the Settlement, you may ask to be excluded from the Class. To request exclusion from the Class, you must mail a written request to the addresses set forth below, so that it is postmarked by January 27, 2003:

**Thomas J. Korge, Esq.
Korge & Korge
230 Palermo Ave.
Coral Gables, FL 33134
Class Counsel**

**Alejandro Vilarello, Esq.
City Attorney
City of Miami
444 SW 2 Avenue, Suite 945
Miami, FL 33130-1910**

**Jess M. McCarty
Assistant County Attorney
Stephen P. Clark Center, Suite 2810
111 N.W. First Street
Miami, Florida 33128-1993**

and

and

**Mark J. Heise, Esq.
Boies, Schiller & Flexner, LLP
100 S.E. 2nd Street
Suite 2800
Miami, FL 33131
Class Counsel**

**Joseph H. Serota, Esq.
Weiss Serota Helfman Pastoriza & Guedes, P.A.
2665 South Bayshore Dr.
Suite 420
Miami, FL 33133
Counsel for the City**

And file the original with the Clerk of the Eleventh Circuit Court on or before January 27, 2003 at the following address:

**Clerk, Eleventh Circuit Court
Dade County Courthouse
73 West Flagler Street
Miami, Florida 33130**

Your request for exclusion need not be in any particular form, but it must state the following information:

- (1) Your name, address and telephone number;
- (2) A statement that you wish to be excluded from the Class and, to the extent possible, which parking facilities you parked at between September 1, 1999 and September 30, 2002;
- (3) Your signature; and
- (4) The case name and number (*Patrick McGrath v. The City of Miami, et al.*, Case No. 99-21456 CA 10).

Please be sure to write the words "EXCLUSION REQUEST" on the lower left-hand corner of the front of the envelope.

If you elect to be excluded from the Class:

1. you will not be eligible for any of the Settlement benefits;
2. you will not be allowed to object to the terms of the Settlement; and
3. you will not be bound by any subsequent rulings entered into in this case.

REMEMBER: YOUR REQUEST FOR EXCLUSION MUST BE *POSTMARKED* NO LATER THAN JANUARY 27, 2003. OTHERWISE, EXCEPT AS THE COURT MAY PROVIDE, YOUR REQUEST TO BE EXCLUDED WILL BE LATE AND INVALID.

IF YOUR EXCLUSION REQUEST IS *POSTMARKED* AFTER JANUARY 27, 2003:

- 1. YOU WILL REMAIN A MEMBER OF THE CLASS AND YOU WILL BE BOUND BY THE SETTLEMENT AND BY ALL ORDERS AND JUDGMENTS IN THIS LAWSUIT.**
- 2. YOU WILL NOT BE ABLE TO FILE, PARTICIPATE IN, LITIGATE, OR CONTINUE ANY OTHER LAWSUIT OR PROCEEDING BASED ON OR RELATING TO THE CLAIMS, CAUSES OF ACTIONS, FACTS OR CIRCUMSTANCES RELEASED BY THE SETTLEMENT.**

Even if you already have a pending claim, lawsuit, or other proceeding against the City relating to parking surcharge fees, you still must submit a written request for exclusion so that it is postmarked by January 27, 2003, to be excluded from the Class. Otherwise, you will be bound by the orders and judgments in this case, and, in the event this Settlement is approved and becomes final, your proceedings will be barred.

PART 8: THE SETTLEMENT HEARING, YOUR RIGHT TO OBJECT TO THE SETTLEMENT, AND YOUR RIGHT TO APPEAR

A. THE SETTLEMENT HEARING

On February 10, 2003 at 10:30a.m. EST, at Courtroom 6-1, at the Eleventh Judicial Circuit, 73 West Flagler St., Miami, Florida, 33130, the Court will hold a Final Approval Hearing to consider whether to grant final certification of the Class for Settlement purposes, and whether to approve the Settlement as fair, reasonable, and adequate. The Court also will determine the amount of attorney's fees and expenses to be awarded to Class Counsel.

If you have not asked to be excluded from the Class, you may object to any aspect of the Settlement, as discussed below. You also may appear at the Settlement Hearing to present your objections, although you are not required to do so. If you are satisfied with the settlement, you do not need to appear at the hearing. Please note that the Court has the right to change the hearing date or time without further notice. If you are planning to attend the hearing, you should confirm the date and time before going to the Court.

B. YOUR RIGHT TO OBJECT AND INSTRUCTIONS FOR OBJECTING

You must remain a member of the Class in order to object to any aspect of the Settlement, including final certification of a Class, the fairness of the Settlement, the adequacy of the class representation by Plaintiff and his attorney, and the award of Attorney's Fees and Expenses, and any special payments to the Class Representative.

Your written objection must include:

- (1) Your name, address and telephone number;
- (2) A statement of your objection(s) and any supporting law and/or evidence you wish to introduce; and
- (3) The case name and number (*Patrick McGrath v. The City of Miami*, Case No. 99-21456 CA 10).

NO LATER THAN JANUARY 27, 2003 YOU MUST FILE YOUR WRITTEN OBJECTIONS WITH THE CLERK OF THE COURT AT THE ADDRESS LISTED IN PART 7. YOU ALSO MUST MAIL COPIES OF THOSE OBJECTIONS TO THE ATTORNEYS LISTED IN PART 7, POSTMARKED NO LATER THAN JANUARY 27, 2003.

The Court will not consider any objections postmarked after January 27, 2003, unless you can demonstrate good cause for its being late. Late objections will be deemed to have been given up or waived, unless good cause is shown.

If you file your objections on time and the Court overrules them, you will still be eligible for a refund under the Settlement provided you also file a timely and complete Request for Refund Form.

C. YOUR RIGHT TO APPEAR

If you file and serve a timely written objection as described above, you may - but are not required to - attend the Settlement Hearing, either in person or through an attorney paid by you. You or your attorney may appear at the Settlement Hearing to object to any aspect of the Settlement, including final certification of a Settlement Class, the fairness of the Settlement, the adequacy of the Class's representation by the Plaintiffs and Plaintiffs' counsel, and the award of attorney's fees and expenses, and the award of special payments to the Representative Plaintiffs.

If you or your attorney intend to appear at the Settlement Hearing, you or your attorney must file a Notice of Intention to Appear with the Clerk of the Court, and serve that Notice on Counsel, at the addresses listed in Part 7 above. Your Notice of Intention to Appear must be postmarked no later than January 27, 2003, except as provided by the Court.

PART 9: ATTORNEY'S FEES, EXPENSES AND SPECIFIC PAYMENTS FOR THE REPRESENTATIVE PLAINTIFFS

At the Settlement Hearing, Class Counsel will ask the Court for an initial award of attorney's fees in the amount of \$3.6 million, plus litigation expenses and disbursements. The Parties do not oppose this request so long as it complies with applicable law for the award of attorneys' fees in these types of cases. The Court, however, will ultimately determine the amount of fees and expenses to be awarded. Special payment for the Class Representative of \$2,000 will be requested.

PART 10: HOW TO GET ADDITIONAL INFORMATION

This Notice is only a summary of the Settlement, which is set forth in a more detailed legal document called the "Settlement Agreement and Release." The full Settlement Agreement and Release is on file with the Clerk of the Court. For a more detailed statement of the matters involved in this case, Plaintiffs and the City also refer you to the Complaint and to other papers and Court orders on file in the Clerk's office. You may inspect these documents at the Clerk's Office at any time during normal business hours, Monday through Friday, 9:00 a.m. to 5:00 p.m., Eastern Standard Time. **If you have any questions or simply need a copy of the Request for Refund Form, you may call the Class Action Administrator at 1-877-647-5879 or view the various settlement documents on the internet at www.miamisurcharge.com and print the Request for Refund Form from that web site.**

***PLEASE DO NOT CALL THE COURT OR THE CLERK OF THE COURT.
THEY WILL NOT ANSWER YOUR QUESTIONS.***

Dated: November 22, 2002 at Miami, Florida.